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No. , Orig.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

STATE OF NEW JERSEY,
Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

SUPPLEMENTAL ANSWER OF THE STATE OF NEW JERSEY.

THEODORE D. PARSONS,
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SUPPLEMENTAL ANSWER OF THE STATE OF NEW JERSEY.

New Jersey desires to file a Supplemental Answer to the original Answer that has been filed heretofore in this case, said Supplemental Answer to be added to and made a part of the original Answer filed in this case.

1. New Jersey alleges that the application of petitioner is premature and requests that petitioner's petition be dismissed for the following reasons:

(a) The City does not have approval from the New York State Board in accordance with the 1944 Compact.

(b) In reviewing the many U. S. Supreme Court decisions in diversion cases it is apparent that the Court is interested in encouraging, rather than discouraging, interstate compacts. The New York Petition was filed on April 1, 1952; although Pennsylvania had

not adopted the Incodel Compact. New York acted rather hastily in filing this Petition, not even waiting for at least two terms of the Pennsylvania Legislature to go by. They are, in effect, jumping the gun, and a Petition filed under those circumstances should be rejected.

(c) The available yield to the City of New York will amply supply their water requirements until 1980, and although estimates for construction and organization of such a project require from 10 to 15 years, this application, under the facts presented in the Petition, should not be made until 15 years prior to 1980, or 1965.

(d) Since the New York East Branch reservoirs are not complete and are not in operation, it is premature for the City of New York to seek to amend the present release formula, since no actual experience has been obtained by actual operation of these reservoirs. It is unfair on the part of the City of New York to attempt to modify a formula that has not been tested by actual experience.

2. Complainant admits that petitioner is seeking modification of the decree of this Court, as alleged in Par. 1 of the Petition.

3. Complainant admits that the decree of this Court was as alleged in Par. 2 of the Petition.

4. Complainant admits the allegations of Par. 3 of the Petition, but avers that the decree in the above-specified case was also based upon the fact that the Special Master found that the proposed diversion of 600,000,000 gallons of water daily by petitioner was excessive, and that this draft should be reduced to the point where it is clear that the amount permitted to be taken will not inflict substantial damage on New Jersey or its citizens and will not deprive New Jersey of any greater part of the enjoyment of the benefits of the Delaware River than the State of New Jersey should be expected, in all equity, to yield to the other states having a common interest in the river, and, furthermore,

that the effects of the proposed diversion of 600,000,000 gallons of water daily by the City of New York indicated a substantial damage to New Jersey and its citizens and a greater damage than New Jersey should be required to bear.

5. Complainant admits the allegations of Par. 4 of the Petition.

6. Complainant admits that the consumption and use of water by the City of New York has been increasing since 1931, but denies that the consumption and use in the City of New York have reached a critical point, as alleged in Par. 5, and denies that the existing water facilities of New York City are over-taxed and will be insufficient to meet the anticipated needs of the City of New York and communities outside its borders, to which New York alleges it is, by law, obligated to supply water.

7. Complainant is without information sufficient to form a belief as to the present dependable and safe yield of the system of water supply of petitioner, and, therefore, denies said allegations and leaves petitioner to its proof thereof.

8. Complainant is without information sufficient to form a belief of the annual rate of consumption and use of water by petitioner, and, therefore, denies said allegations and leaves petitioner to its proof thereof.

9. Complainant is without information sufficient to form a belief as to the allegations of Par. 8 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

10. Complainant is without information sufficient to form a belief as to the allegations of Par. 9 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

11. Complainant denies the allegations of Par. 10 of the Petition.

12. Complainant is without information sufficient to form a belief as to the allegations of Par. 11 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

13. Complainant is without information sufficient to form a belief as to the allegations of Par. 12 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

14. Complainant is without information sufficient to form a belief as to the allegations of Par. 13 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

15. Complainant is without information sufficient to form a belief as to the allegations of Par. 14 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

16. Complainant denies the allegations of Par. 15 of the Petition and alleges that the petitioner has other water supplies within the State of New York which it should employ to supply its additional needs.

17. Complainant denies the allegations of Par. 16 of the Petition.

18. Complainant is without information sufficient to form a belief as to the allegations of Pars. 17 and 18 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

19. Complainant admits the allegations of Par. 19 of the Petition that petitioner is seeking a modification of the formula contained in the Court's decree of May 25, 1931, but denies that such modification should be made, and, on the contrary, New Jersey alleges that the proposed modification is inadequate for New Jersey.

20. Complainant admits the allegations of Par. 20 of the Petition that the formula in the decree of this Court is as specified in said paragraph.

21. Complainant denies that the proposed modification as contained in Par. 21 of the Petition is adequate for the interest of the State of New Jersey.

22. Complainant is without information sufficient to form a belief as to the allegations of Par. 22 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

23. Complainant is without sufficient information to form a belief as to the allegations of Par. 23 of the Petition, and, therefore, denies same and leaves petitioner to its proofs thereof.

24. Complainant admits the allegations of Par. 24 of the Petition.

25. Further answering the Petition, complainant, the State of New Jersey, avers that there are located in the State of New Jersey large industrial and agricultural areas, which have enjoyed substantial growth and expansion during the past five years, and which will expand greatly in the next twenty to thirty years, to the extent that the needs for water for industrial uses, agriculture, oysters, fisheries, recreation, municipal water supplies, and household will be greatly expanded. That, as a consequence of such growths, it will be necessary that the State of New Jersey, or its political subdivisions, draw or utilize waters from the Delaware, and as a consequence, complainant must have assurance of a constant and satisfactory available water supply from the Delaware River.

26. Further answering the Petition, complainant, the State of New Jersey, alleges that, before petitioner is granted any further withdrawals of water from the tributaries of the Delaware River, over and above the withdrawals authorized by the decree of this Court, dated May 25, 1931, that an equitable apportionment of the water of the Delaware River should be made, by which each of the contiguous States be authorized to withdraw its aliquot share of the water from said river, and that petitioner be enjoined from taking more than its fair and equitable share of the waters of said river to the damage of the State of New Jersey.

27. Further answering the Petition, complainant, the State of New Jersey, requests this Court decree that said decree shall in nowise change, affect, or impair the diversion of water of the Delaware River in and through the Delaware and Raritan Canal and Feeder in accordance with the following law:

"Existing rights preserved. The passage of this act shall in nowise change, affect or impair the diversion of the waters of the Delaware River in or through the Delaware and Raritan canal and feeder as at any time heretofore or the use of such water so diverted for a domestic or industrial water supply or any other purpose; provided, that the amount diverted shall not exceed the amount at any time heretofore diverted either in or out of the Delaware basin; and nothing in this act shall affect or impair other existing rights in the Delaware river, if any, of the State of New Jersey or any agency or political subdivision thereof." (Chapter 121, Laws of 1944.)

28. WHEREFORE, the State of New Jersey, the complainant herein, respectfully petitions this Court to dismiss the Petition of the City of New York, and for such other relief as to this Court may be just and equitable.

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Solicitor for the State of New Jersey.

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